Supreme Court, U.S.
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No. 98-1116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

IN RE:
AL COPELAND ENTERPRISES, INC.,

Debtor.

GEORGE SAMARAS,

Petitioner,

v.

AFC ENTERPRISES, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

When a bankruptcy court sends a claim to state court to be decided under both state law and federal bankruptcy law, and when the state court decides the state law issues but expressly refuses to exercise jurisdiction over the federal bankruptcy law issues, is the bankruptcy court permitted by its previous orders, by abstention law, or by FED. R. CIV. P. 60(b)(6) to reclaim jurisdiction over and decide the unresolved federal bankruptcy law issues?

DISCLOSURE PURSUANT TO RULE 29.6

The petition for writ of certiorari accurately lists the parties to the proceeding.

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STATEMENT OF THE CASE

The critical facts and procedural background are undisputed and are accurately set forth in the opinion of the court of appeals. *Samaras v. America's Favorite Chicken Company Incorporated (In re Al Copeland Enterprises, Inc.)*, 153 F.3d 268 (5th Cir. 1998). In contrast, petitioner's statement of the case omits or obscures four indisputable facts:

- The bankruptcy court ordered the entire case sent to the state courts to decide state law issues and to exercise concurrent jurisdiction to decide bankruptcy allowance issues.

- The state courts did not decide the bankruptcy allowance issues because they determined that only the bankruptcy court had the jurisdiction to do so.

- Petitioner therefore received a judgment containing items of compensation that are plainly disallowed under federal bankruptcy law.

- The bankruptcy court was the only one left to accept the state courts' jurisdictional invitation to decide the bankruptcy allowance issues.

In light of these critical facts, the rulings of the courts below were not just correct, but were an eminently sensible response to a procedural morass that was not of respondent's making and is not likely to recur in a future case.

REASONS FOR DENYING THE WRIT

SUMMARY OF ARGUMENT

Rather than adjudicate petitioner's claims itself, the bankruptcy court in April 1993 sent those claims to state court where they were to be "liquidated" – *i.e.*, decided for "all purposes," thus resolving both state law issues and "bankruptcy allowance issues." (2 R 228-29, 282-84, 286-87)[1] Although the state courts did decide the state law issues in the case, they held they lacked jurisdiction to decide the bankruptcy law issues concerning the allowability of post-petition attorney's fees, interest, and costs. The judgment therefore included items that even petitioner tacitly concedes were unrecoverable under federal bankruptcy law. The bankruptcy court's August 1997 decision to reclaim jurisdiction over the unresolved federal law issues and disallow post-petition attorney's fees, interest, and costs was correct – and it was properly affirmed by the district court and the court of appeals.

Contrary to petitioner's contention, the decisions of the courts below do not conflict with the Constitution or any case or statute, and they do not present for review any issue of the kind reflected in Supreme Court Rule 10. This is merely a commercial dispute between two private litigants, and the courts below applied settled legal precedent to an unusual procedural setting that is not likely to recur. Petitioner's effort to divine a circuit conflict is contrived and erroneous, because it fails to distinguish between cases in which the state courts actually decided

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[1] Citations are to the volume of the record on appeal to the Fifth Circuit followed by the page number in that volume.

the federal law issues sent to them by abstaining federal courts and cases in which the state courts refused to decide those issues on jurisdictional grounds.

Petitioner's first argument concerning "full faith and credit" is without merit – both because it was not preserved in the courts below and because it does not apply to a situation, as here, in which state courts refused to decide federal law issues sent to them by the abstaining bankruptcy court. Petitioner's second argument – that the bankruptcy court did not "retain jurisdiction" to decide the unresolved federal law issues – is also without merit, because the bankruptcy court's prior orders and the plan of reorganization empowered it to reclaim jurisdiction over and decide the unresolved federal issues. This procedure finds further support in the law of abstention, which permits litigants to return to the abstaining federal court for the resolution of federal law claims that the state court failed or refused to decide. Finally, contrary to petitioner's third argument, the bankruptcy court had broad equitable powers under FED. R. CIV. P. 60(b)(6) to grant respondent relief from a situation it did not cause and could not have anticipated – namely, having a clearly established right under federal bankruptcy law with no state court willing to adjudicate and enforce that right.

ARGUMENT

I. The Decisions Of The Courts Below Are Correct.

As the bankruptcy court correctly held on at least two occasions in this case, federal bankruptcy law

precludes a claimant from recovering post-petition attorney's fees, interest, and costs. (2 R 265, 277-78, 341-42) Although petitioner has not contended otherwise, he nonetheless claims entitlement to these very items in an amount that now exceeds $1 million. That he can assert this claim in the face of prohibitive bankruptcy law is a function of two procedural twists in this case – the bankruptcy court's orders returning the case to state court to be determined "for all purposes," and the state appellate courts' binding conclusion that they lacked any jurisdiction to decide the bankruptcy allowance issues. Because this conclusion placed respondent in a judicial netherworld, where it had a perfectly meritorious argument that no court would address on the merits, it requested the bankruptcy court to reclaim jurisdiction over the case and decide the bankruptcy law issues that the state courts concluded they lacked jurisdiction to resolve. The bankruptcy court's decision to grant this request was properly affirmed by the district court and court of appeals, because that ruling was compelled by the bankruptcy court's prior orders, supported by the law of abstention, and permitted by the equitable powers conferred under Rule 60(b)(6).

Under the plain language of the bankruptcy court's April 1993 order, petitioner's claim was not to be "deemed allowed" under section 5.02 of the plan of reorganization unless and until it was "liquidated" to a final, unappealable judgment in state court. (2 R 224-25) As defined by the bankruptcy court in the September 1995 hearing and the October 1995 order, a "liquidated" claim is one that the state court had decided for "all purposes,"

thus resolving both state law issues and federal "bankruptcy allowance issues." (2 R 228-29, 282-84, 286-87) Accordingly, if the state court were to fail or refuse to decide whether a claimed item is allowable under federal bankruptcy law, as occurred here with respect to attorney's fees, interest, and costs, then it cannot be said that the claim as to those items had been "liquidated" so as to be "deemed allowed" under the plan.

Given the state appellate courts' now-binding view that only the bankruptcy court had jurisdiction to decide bankruptcy allowance issues, it was necessary and appropriate for the bankruptcy court to reclaim jurisdiction over the case, finish the task of liquidation that the state courts refused to undertake, and hold that post-petition attorney's fees, interest, and costs are disallowed under federal bankruptcy law. This result was necessary to avoid whipsawing respondent with a nonsensical reading of the April 1993 order.[2] Thus, if the state court had

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[2] As the bankruptcy court reasoned at the September 6, 1995 hearing:

> But I do think that [the state] court is a court acting not simply to apply state law, but it is there to apply the bankruptcy law with regard to liquidation of the claim. Otherwise, the order doesn't make sense. Because if it was – neither one of you can have it both ways. [Petitioner's counsel] can't have it that that's just a state court and it's just going to apply the state law and you're forever precluded from the bankruptcy part of it, and likewise [respondent's counsel] can't have it his way and say, "Well, but we've always got you back over here to apply the overlay of the Bankruptcy Code on this state law claim, regardless of what the state court says,"

[*continued*]

actually decided (erroneously) that federal bankruptcy law allows claims of post-petition attorney's fees, interest, and costs, respondent could not seek relief from the bankruptcy court. But by the same token, when the state court wholly refused to consider bankruptcy law because it concluded that it lacked any jurisdiction to do so, petitioner cannot be heard to argue that respondent is "forever precluded from the bankruptcy part of it." (2 R 282) The bankruptcy court was the only one left to apply controlling bankruptcy law, and the court of appeals correctly agreed with the bankruptcy court that it was "required to decide the issue." (2 R 342).

Because the April 1993 and October 1995 orders had the effect of an abstention (*see* 2 R 280), federal abstention cases provide guidance in determining whether a party may return to the abstaining federal court to present issues that the state court failed or refused to decide. In *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964), the Court held that when abstention is ordered and "a party freely and without reservation submits his federal claims for decision by the state courts, litigates them there, *and has them decided there*, then . . . he has elected to forego his right to return to the District Court." *Id.* at 419 (emphasis added). But the converse is also true: if a party submits and litigates federal claims in a case sent to state court, and the state court does *not*

[*Note 2 continued*]
because what you both said was, "We're going to state court to liquidate this claim." And in parenthesis I'm putting "for all purposes."

(2 R 282)

decide those claims, then the party may return to the abstaining federal court to present those claims and have them resolved. Lower federal courts have consistently followed this reasoning. *Front Royal and Warren County Industrial Park Corp. v. Town of Front Royal, Virginia*, 135 F.3d 275, 283-84 & n.4 (4th Cir. 1998) (deciding federal claims following abstention to state court because they "were not 'fully litigated,' as *England* requires, . . . since the state circuit court refused to address them."); *Silverman v. Browning*, 414 F. Supp. 80, 85 (D. Conn.), *aff'd*, 429 U.S. 876 (1976) ("in light of the state court's actions in not passing upon the constitutional issues, the plaintiff is not foreclosed from returning to this Court for the presentation of the federal issues for final review.").

The circumstances justifying the bankruptcy court's decision here to adjudicate the bankruptcy law issues are even more compelling than in *Silverman* and *Front Royal*. Unlike *Silverman*, where the state supreme court applied a waiver bar, the state appeals court here refused to adjudicate the issues at all because it concluded that only the bankruptcy court had jurisdiction to decide questions involving bankruptcy allowance. And unlike *Front Royal*, where the United States court of appeals observed that the plaintiff had "perfunctorily performed its duty to return to the state court" and "flout[ed] our very purpose in ordering abstention in the first place," 135 F.3d at 282, respondent here dutifully litigated all state and federal issues through the state courts – only to be met by the state courts' unexpected decision, completely at odds with the bankruptcy court's directive, that they had no jurisdiction to decide the bankruptcy issues. Accordingly, the bankruptcy court was correct in finishing the state

courts' job of liquidation and disallowing the claims for post-petition attorney's fees, interest, and costs pursuant to federal bankruptcy law.

Finally, even if the bankruptcy court's orders and the law of abstention did not permit the retaking of jurisdiction over the federal law claims, the Fifth Circuit was correct in construing Rule 60(b)(6) to support such an action. Rule 60(b)(6), made applicable to bankruptcy proceedings by FED. R. BANKR. P. 9024, stands as a "grand reservoir of equitable power" to relieve a party from the inequitable effects of a final order. *Harrell v. DSC Equip. Leasing Corp.*, 951 F.2d 1453, 1458 (5th Cir. 1992). As the court of appeals correctly held, the bankruptcy court had "ample justification" under this rule for affording respondent relief from any unintended effects of its prior orders: no one could have anticipated that the state courts would refuse to consider the federal law issues; when respondent was first alerted to such a possibility, it returned to bankruptcy court to clarify that it should raise the issue in the state appellate court; it pursued relief all the way from the trial court to the Texas Supreme Court; and it sought Rule 60(b)(6) relief only after every state court refused to consider the federal law issues. Based on these compelling facts, the court below correctly decided that it "would be inequitable" to deny respondent "a federal determination of the allowability of the fees, costs, and interest portion of [petitioner's] claim." 153 F.3d at 272.

II. Petitioner's Attacks On The Decisions Below Are Without Merit.

Petitioner makes three separate but overlapping arguments, all calculated to suggest that the courts below

condoned an impermissible assault on a state court judgment. Petitioner's first argument, however, has not been preserved; his second incorrectly construes the bankruptcy court's orders and the law of abstention; and his third finds no support in law or logic. But most importantly, none of the arguments presents for review any issue of the kind reflected in Supreme Court Rule 10.

A. Petitioner's full faith and credit argument has been waived and, in any event, does not apply here.

Petitioner chides the court of appeals for "not address[ing] the application of the Full Faith and Credit Statute, 28 U.S.C. § 1738." (Petition at 11) Petitioner, however, did not raise this argument in the bankruptcy court or the district court, and asserted it in the court of appeals for the first time in his petition for rehearing. This was insufficient to preserve the issue in the Fifth Circuit, which follows the well-settled practice that issues raised for the first time in a petition for rehearing will not be considered. *Dean v. Dean*, 837 F.2d 1267, 1268 (5th Cir. 1988) (citing cases); *United States v. Bigler*, 817 F.2d 1139, 1140 & n.3 (5th Cir.) (on rehearing), *cert. denied*, 484 U.S. 842 (1987). Having failed to timely raise his full faith and credit argument in the courts below, petitioner may not now assert it in this Court. *Sisson v. Ruby*, 497 U.S. 358, 359 n.1 (1990).

But even if the issue were preserved for review, the full faith and credit statute did not preclude the bankruptcy court from deciding federal law issues that the state courts determined they lacked jurisdiction to

address. Under the full faith and credit statute, as well as the related *Rooker-Feldman* doctrine to which petitioner also alludes,[3] a federal court cannot sit in appellate review of a state court's decision without, at the very least, determining what effect the state would give its own judgment. Thus, as the cases cited by petitioner illustrate, a bankruptcy court could not have reviewed a state court's determination that federal bankruptcy law does allow awards of post-petition attorney's fees, interest, and costs – even though such a ruling would have been erroneous. *Reitnauer v. Texas Exotic Feline Foundation, Inc. (In re Reitnauer)*, 152 F.3d 341, 344 (5th Cir. 1998); *Sanders v. City of Brady (In re Brady, Texas, Municipal Gas Corp.)*, 936 F.2d 212, 219 (5th Cir. 1991).

In contrast, no such second-guessing occurred in this case. Rather than rule on the merits, the state courts refused to even address the bankruptcy allowance issues because they concluded that only bankruptcy courts have jurisdiction to decide such questions. And rather than review or disagree with this jurisdictional determination or any other ruling of the state courts, the bankruptcy court instead merely accepted the state courts' invitation to exercise its jurisdiction and decide the unresolved bankruptcy allowance issues. Nothing about the full faith and credit statute prohibits a federal court from deciding federal law issues left unresolved by the state courts to

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[3] *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983) (federal district courts do not have the authority to review state court judgments); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) (jurisdiction of the federal district court is strictly original).

which the claim was sent – and petitioner cites no case that holds to the contrary. *Cf. Front Royal*, 135 F.3d at 284 ("There appear to be no cases in which a Court of Appeals has denied a litigant the right to return to federal court where federal claims remained after a *Burford* abstention. . . . ").

In an effort to obscure the critical distinction between a state court that decides the merits of a federal law issue and one that refuses to decide the issue on jurisdictional grounds, petitioner asserts that the state appellate court's judgment or mandate, and not its opinion, "is the sole point of reference to determine what claims or issues have been resolved." (Petition at 12) Even in the context of res judicata, which petitioner tries to invoke, his argument is wrong. As both federal and state courts recognize, "[t]he res judicata effect of a prior judgment is an issue of law that depends upon an interpretation of the court's *opinion*." *Royal Ins. Co. of America v. Quinn-L Capital Corp.*, 3 F.3d 877, 888 (5th Cir. 1993) (emphasis added), *cert. denied*, 511 U.S. 1032 (1994); *Hudspeth v. Hudspeth*, 673 S.W.2d 248, 251 (Tex. App. – San Antonio 1984, writ ref'd n.r.e.) (in determining applicability of res judicata, "[j]udgments, like other written instruments, are to be construed as a whole toward the end of harmonizing and giving effect to all the court has written," including "its findings and recitals.").

In any event, this case does not turn on res judicata; it turns on whether the state courts effectuated the bankruptcy court's 1993 and 1995 orders by exercising their concurrent jurisdiction to determine allowability under federal bankruptcy law. The only way to know whether

the state courts in fact did so is to look to their substantive opinion, not just to their formal judgment or mandate. Here, it is undisputed that the state courts did not exercise jurisdiction to decide the bankruptcy law issues, and petitioner offers no authority that would have required the bankruptcy court to blind itself to that fact. *Cf. Front Royal*, 135 F.3d at 283-84 (in determining whether state court litigant is entitled to return to abstaining federal court to raise federal issues, court looks to state court's opinion and letter ruling to confirm that federal issue was not decided); *Kohn v. Leavitt-Berner Tanning Corp.*, 157 B.R. 523, 526-27 (N.D.N.Y. 1993) (full faith and credit statute does not prohibit bankruptcy court from looking behind a state court judgment to ascertain the relationship between the parties and the portion of the judgment that is allowable under bankruptcy law).

Finally, there is no merit to petitioner's related argument that a "refusal of the state court to apply bankruptcy law is no different from applying it erroneously." (Petition at 21) To the contrary, there is a complete difference between a disposition on jurisdictional grounds and a disposition on the merits. A court's determination that it lacks jurisdiction to decide an issue has none of the force of a ruling on the merits; it does not, for example, constitute res judicata as to the merits and it does not bar a party from bringing the same claim in a court having jurisdiction. *Cowgill v. White*, 543 S.W.2d 437, 440 (Tex. Civ. App. – Corpus Christi 1976, writ ref'd n.r.e.); *Silverman v. Browning*, 414 F. Supp. at 84. By the same token, the state courts' determination here that they lacked jurisdiction to resolve the merits of the bankruptcy allowance

issues gave the bankruptcy court the right – indeed, the obligation – to decide those issues on the merits.

B. The bankruptcy court's orders, the plan of reorganization, and the law of abstention permitted the bankruptcy court to reclaim jurisdiction over the unresolved federal law issues.

In his second argument, petitioner asserts that neither the bankruptcy court's orders and plan of reorganization, nor the abstention cases cited by the courts below, permitted the court to reclaim jurisdiction over the unresolved federal law issues. By analyzing in detail the particular bankruptcy court orders at issue (Petition at 14-17), petitioner only underscores that this is a fact-specific case not sufficiently important or far-reaching to justify this Court's review. Moreover, petitioner misconstrues the meaning of the orders and plan, and he fails to offer any meaningful distinction between this case and the abstention decisions cited by the courts below.

Attempting to draw a distinction between the concepts of "liquidation" and "administration," petitioner first argues that the bankruptcy court "ceded jurisdiction" over the former to the state courts and, under the April 1993 order and the plan of reorganization, retained jurisdiction only over the latter. (Petition at 13-17) This argument wholly ignores how the bankruptcy court defined the term "liquidation" in 1995, when respondent sought clarification of what issues it was required to raise in the state appellate courts. As the bankruptcy court made clear at that time, a "disputed claim" (as those words are used in the plan) would not be "liquidated" so

as to be "deemed allowed" (as those words are used in the April 1993 order) unless and until the state courts both decided state law issues and exercised their concurrent jurisdiction to decide the bankruptcy allowance issues. (2 R 228, 282-83, 286-87) Because the state courts indisputably refused to exercise jurisdiction over and decide the bankruptcy allowance issues, petitioner's claims were not fully "liquidated" within the meaning of the bankruptcy court's orders. Under those orders and the retention-of-jurisdiction clause in the plan of reorganization, the bankruptcy court therefore had jurisdiction to finish the task of liquidation that the state courts only partially completed. To hold otherwise would have left respondent in the intolerable state of having a perfectly meritorious federal law argument – but with no court willing to address it.

Petitioner fares no better in attempting to distinguish *Silverman* and *Front Royal*, the analogous abstention cases cited by the Fifth Circuit. In an effort to confine those cases to their precise facts, petitioner argues that they are distinguishable because the abstentions were forced upon the litigants and because the abstaining federal courts specifically retained jurisdiction in their initial abstention orders. (Petition at 18-20) These are distinctions without a difference, for the decisions of the *Silverman* and *Front Royal* courts to adjudicate the unresolved federal issues did not turn on the presence of a "retention of jurisdiction" clause in the abstention orders or on the happenstance that the litigants did not volunteer for the abstention. Rather, the willingness of both courts to reclaim jurisdiction over the unresolved federal issues

turned on the Court's strongly-held policy – also followed by the Fifth Circuit below – that litigants affected by abstention should "not be exposed . . . to procedural traps operating to deprive them of their right to a District Court determination of their federal claims." *England*, 375 U.S. at 418. Given the refusal of the state courts here to exercise jurisdiction over respondent's bankruptcy allowance issues, and given the importance of federal bankruptcy law to the equitable distribution of a debtor's assets, the courts below were correct in drawing guidance from *England*, *Front Royal*, and *Silverman* and refusing to deprive respondent of its right to a determination of the unresolved federal law issues in the case.[4]

C. The bankruptcy court had broad equitable powers to grant respondent relief.

In a final variant of his unpreserved full faith and credit argument, petitioner asserts that Rule 60(b)(6) was

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[4] Relying on a case cited in *England*, petitioner also argues that respondent "should have filed a petition for writ of certiorari in the United States Supreme Court to correct the erroneous holding of the Texas Court of Appeals." (Petition at 21, citing *NAACP v. Button*, 371 U.S. 415 (1963)). This argument is wrong. Neither *Button* nor *England* holds that a party in the position of respondent is *required* to petition this Court as its exclusive avenue of redress – particularly when the state court has not even decided the federal law issue. Rather, as *England*, *Button*, and *Silverman* make clear, a party like respondent may elect between petitioning for certiorari or returning to the abstaining federal court. Moreover, the issues that would have been presented in a certiorari petition were mooted before the time for a petition expired by the bankruptcy court's decision to address and resolve respondent's bankruptcy law issues.

impermissibly used "to mount a collateral attack on a state court judgment," to "substitute for direct appeal," and to "re-examine" issues determined by the judgment. (Petition at 21, 23) This argument misapprehends the purpose for which Rule 60(b)(6) was invoked, and again ignores the critical fact that the state court refused to reach the federal issues.

Underlying petitioner's argument is the notion that Rule 60(b)(6) was invoked to somehow strip him of an alleged "property right" in the state court judgment. Nothing could be less so. Respondent invoked Rule 60(b)(6) not as a means to obtain relief from the state court judgment but rather to obtain relief from the April 1993 order, if it were somehow interpreted to prohibit the bankruptcy court from doing anything but the ministerial act of applying the reorganization plan's 15% discount to the amount of the state court judgment. Even if the 1993 order could be read in such a fashion, Rule 60(b)(6) provided an appropriate means by which the bankruptcy court could decide the unresolved federal issues.

To be sure, the effect of invoking Rule 60(b)(6) in this manner was to enable the bankruptcy court to disallow the state courts' awards of post-petition attorney's fees, interest, and costs. That does not mean, however, that Rule 60(b)(6) was used as a "collateral attack," a "substitute for appeal," or a way to "re-examine" issues determined by the state court judgment. It has long been established that a bankruptcy court has broad equitable powers to look behind a state court judgment to determine the allowability under federal bankruptcy law of the components of that judgment – unless the state court

did decide the allowability issues. *Pepper v. Litton*, 308 U.S. 295, 304-06 (1939); *In re Bus Stop, Inc.*, 3 B.R. 26, 27 (Bankr. S.D. Fla. 1980). Because the state courts here did not decide these bankruptcy allowability issues, the bankruptcy court was empowered to reclaim jurisdiction over and decide those issues.[5]

Petitioner's final contention that "the state courts did have jurisdiction to determine the federal law claims" (Petition at 24) only proves the appropriateness of Rule 60(b)(6) relief, given the refusal of the state courts to exercise that jurisdiction. Indeed, if the state courts had jurisdiction to decide the bankruptcy allowance issues but flouted the exercise of that jurisdiction, then it would have been egregiously inequitable to saddle respondent with this erroneous but binding ruling and use the April 1993 order as a sword to prevent even the bankruptcy court from resolving the bankruptcy allowance issues.

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[5] Contrary to petitioner's characterization, *Pepper v. Litton* accords bankruptcy courts a far broader equitable power to scrutinize state court judgments than merely the power "to determine whether [the judgment] was void for want of subject matter jurisdiction or was procured through fraud on the court that rendered it." (Petition at 23) In fact, *Pepper* makes plain that a bankruptcy court has broad equitable powers to "look behind" a state court judgment to determine *any* theory that would require the amount awarded to be disallowed or subordinated, as long as the state court did not previously adjudicate that theory. 308 U.S. at 304-05. *See Heiser v. Woodruff*, 327 U.S. 726, 737-38 & n.1 (1946) (central issue in *Pepper* is whether theory of allowability was decided by the state court). Thus, in *In re Bus Stop*, 3 B.R. at 27, the court refused to limit *Pepper* and its progeny to the "narrow" situation in which the state court judgment was procured through fraud.

Rule 60(b)(6)'s "grand reservoir of equitable power" protects against such manifest inequity.

In sum, even if the bankruptcy court erred in concluding that its prior orders and the law of abstention permitted it to reclaim jurisdiction over the case and decide the bankruptcy allowance issues, equitable doctrines nonetheless would have permitted that court to grant respondent relief from the unintended effects of the April 1993 order. The bankruptcy court's final order disallowing petitioner's claim for post-petition attorney's fees, interest, and costs therefore could be and was properly affirmed on either this alternative equitable ground or on the other grounds discussed above.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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